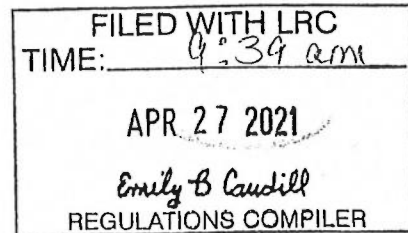


## NOTICE

Amendment to 803 KAR 2:070, Inspections, was filed with the Legislative Research Commission on April 27, 2021.

The amendment is posted at <https://legislature.ky.gov>. Select the Kentucky Law Tab, Kentucky Administrative Regulations, KAR List by Title, then Title 803 Labor Cabinet and scroll down to the regulation under Chapter 2 Occupational Safety and Health.

Changes to the regulation and public hearing information is available at the aforementioned website or in the pages below following this notice.



1 LABOR CABINET

2 Department of Workplace Standards

3 Division of Occupational Safety and Health Compliance

4 Division of Occupational Safety and Health Education and Training

5 (Amendment)

6 803 KAR 2:070. Inspections [~~procedure~~].

7 RELATES TO: KRS 338.101

8 STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky  
10 Occupational Safety and Health Standards Board to promulgate occupational safety and health  
11 administrative regulations and authorizes the chairman to reference federal standards without  
12 board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the  
13 board to establish, modify, or repeal standards and reference standards. [~~Pursuant to the authority~~  
14 granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the  
15 following rules and administrative regulations are adopted, governing the authority to conduct  
16 inspections. The function of the] This administrative regulation establishes the [~~is to identify~~  
17 this] authority for conducting occupational safety and health inspections and the procedure to be  
18 followed by the compliance officers during the conduct of the inspections.

19 Section 1. Definitions. (1) "Commissioner" is defined in KRS 338.015.

20 (2) "Compliance safety and health officer" means a person authorized by the commissioner to  
21 conduct occupational safety and health inspections and investigations.

1 (3) "Compulsory process" means the institution of any appropriate action, including ex parte  
2 application for an inspection, or investigation, warrant or its equivalent.

3 (4) "Director" means Director, Division of Occupational Safety and Health Compliance.

4 (5) "Employee" is defined in KRS 338.015(2).

5 (6) "Employer" is defined in KRS 338.015(1).

6 Section 2. Authority for Inspections. (1) Compliance ~~safety and health officers~~ [Safety and  
7 Health Officers of the Division of Occupational Safety and Health Compliance] are authorized to  
8 conduct inspections pursuant to KRS 338.101 [enter without delay and at reasonable times any  
9 factory, plant, establishment, construction site, or other area, workplace or environment where  
10 work is performed by an employee of an employer; to inspect and investigate during regular  
11 working hours and at other reasonable times, and within reasonable limits and in a reasonable  
12 manner, any such place of employment, and all pertinent conditions, structures, machines,  
13 apparatus, devices, equipment and materials therein; to question privately any employer, owner,  
14 operator, agent or employee; and to review records required by KRS Chapter 338 and  
15 administrative regulations issued pursuant thereto, and other records which are directly related to  
16 the purpose of the inspection].

17 (2) Prior to inspecting areas containing information [which is] classified by an agency of the  
18 United States Government [;] in the interest of national security, compliance safety and health  
19 officers shall obtain [have obtained] the appropriate security clearance.

20 Section 3 [2]. Objection to Inspection. (1) If an employer refuses [Upon a refusal] to permit a  
21 compliance safety and health officer [; in the exercise of his official duties,] to enter without  
22 delay and at reasonable times any place of employment [or any place therein,] to inspect, [to]  
23 review records, [or to] question any employer, owner, operator, agent, or employee, [in

1 ~~accordance with this administrative regulation,~~ or [to] permit a representative of employees to  
2 accompany the compliance safety and health officer during the physical inspection of any  
3 workplace [~~in accordance with 803 KAR 2:110~~], the compliance safety and health officer shall  
4 terminate the inspection or confine the inspection to [either] areas, conditions, structures,  
5 machines, apparatus, devices, equipment, materials, records, or interviews concerning which no  
6 objection is raised.

7 (2) The compliance safety and health officer shall endeavor to ascertain the reason for the [such]  
8 refusal and [and he shall] immediately report the refusal and [the] reason [therefore] to the  
9 commissioner [Commissioner of the Department of Workplace Standards].

10 (3) The commissioner shall promptly take appropriate action including compulsory process [5] if  
11 necessary.

12 (4)(a) Compulsory process may be sought in advance of an inspection if, in the judgment of the  
13 commissioner, circumstances exist which make such pre-inspection process desirable or  
14 necessary.

15 (b) It may be desirable or necessary to seek compulsory process in advance of an attempt to  
16 inspect when:

17 1. The employer's past practice implicitly or explicitly puts the commissioner on notice that a  
18 warrantless inspection will not be allowed;

19 2. Procuring a warrant prior to conducting the inspection would avoid, in case of refusal, the  
20 expenditure of significant time and resources to obtain a warrant and return to the establishment  
21 or worksite; or

22 3. An inspection includes the use of special equipment or the presence of an expert, or experts, is  
23 needed to conduct the inspection and procuring a warrant prior an inspection would alleviate the



difficulties or costs encountered in coordinating the availability of such equipment or expert.

(5) With the approval of the commissioner, the director or other designee may obtain compulsory process.

(6) Ex parte inspection warrants shall be the preferred form of compulsory process when compulsory process is relied upon.

Section 4 [3]. Entry not a Waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty pursuant to ~~[under]~~ KRS Chapter 338 ~~[Compliance safety and health officers are not authorized to grant any such waiver]~~.

Section 5 [4]. Conduct of Inspections. (1) Inspections ~~[Subject to the provisions herein, inspections]~~ shall take place at [such] times and [in such] places ~~[of employment]~~ as the commissioner or designee ~~[Commissioner of the Department of Workplace Standards or the compliance safety and health officer]~~ may direct.

(2) At the beginning of an inspection, or as soon as practical, [;] the compliance safety and health officer shall: ~~[officers shall]~~

(a) Present ~~[present]~~ her or his ~~[their]~~ credentials to the owner, operator, or agent in charge at the establishment or worksite. ~~[;]~~

(b) Explain ~~[explain]~~ the nature and purpose of the inspection. ~~[; and]~~

(c) Indicate ~~[indicate]~~ generally the scope of the inspection and the records she or he wishes ~~[specified herein which they wish]~~ to review. Such ~~[However, such]~~ designation of records shall not preclude access to additional records ~~[specified herein]~~.

~~(2) Compliance safety and health officers shall]~~

(d) Have ~~[have]~~ authority to take environmental samples, ~~[and to take or obtain]~~ photographs,

1 videos, oral recordings, and statements. ~~[related to the purpose of the inspection,]~~

2 (e) Employ ~~[employ]~~ other reasonable investigative techniques such as ~~[, and question privately~~  
3 ~~any employer, owner, operator, agent or employee of an establishment. As used herein, the term~~  
4 ~~"employ other reasonable investigative techniques" includes, but is not limited to,]~~ the use of  
5 devices to measure employee exposures and the attachment of personal sampling equipment such  
6 as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their  
7 exposures.

8 (3) In taking photographs and samples, compliance safety and health officers shall take  
9 reasonable precautions to ensure that such actions with flash, spark-producing, or other  
10 equipment is not ~~[would not be]~~ hazardous.

11 (4) Compliance safety and health officers shall comply with ~~[all]~~ employer safety and health  
12 rules and practices at the establishment or worksite ~~[being inspected,]~~ and ~~[they shall]~~ wear, as  
13 well as use, appropriate personal protective equipment ~~[and use appropriate protective clothing~~  
14 ~~and equipment].~~

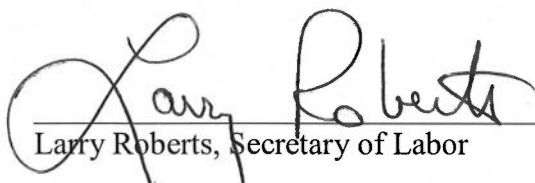
15 (5) ~~[(4)]~~ The conduct of an inspection shall ~~[be such as to]~~ preclude unreasonable disruption of  
16 ~~[the]~~ operations at ~~[of]~~ the employer's establishment or worksite.

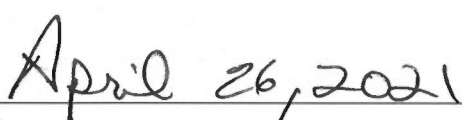
17 (6)(a) ~~[(5)]~~ At the conclusion of an inspection, the compliance safety and health officer shall  
18 offer conference ~~[confer]~~ with the employer ~~[or his representative]~~ and informally advise her or  
19 him of ~~[any]~~ apparent ~~[safety and health]~~ violations ~~[disclosed by the inspection].~~

20 (b) The ~~[During such conference, the]~~ employer shall be afforded an opportunity to bring to the  
21 attention of the compliance safety and health officer any pertinent information regarding  
22 conditions in the workplace

23 ~~[(6) Inspection shall be conducted in accordance with the requirements of this section].~~

As approved by

  
\_\_\_\_\_  
Larry Roberts, Secretary of Labor

  
\_\_\_\_\_  
Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at

<https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378.

Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3<sup>rd</sup> Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:070

Contact person: Robin Maples (502) 564-4107, [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov), Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since November 7, 1979, defines terms. Section 2 establishes the authority for conducting occupational safety and health (OSH) inspections and the procedure to be followed by the compliance officers during the conduct of the inspections pursuant to 29 CFR 1903.4, 29 CFR 1904.5, and 29 CFR 1904.7. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since November 7, 1979, defines terms. Section 2 establishes the authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections pursuant to 29 CFR 1903.4, 29 CFR 1904.5, and 29 CFR 1904.7. This amendment also updates this administrative

regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.



## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:070

Agency Contact: Robin Maples (502) 564-4107, [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov), Facsimile: (502) 564-4769

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a)

2. State compliance standards.

The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate.

The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.



## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 803 KAR 2:070

Contact Person: Robin Maples (502) 564-4107, [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov), Facsimile: (502) 564-4769

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years?

There are no costs associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures.